



UNIVERSITY OF SOUTH CAROLINA

AMENDMENT NO. 3 TO SOLICITATION

TO: ALL VENDORS

FROM: Charles Johnson, Procurement Manager

SUBJECT: SOLICITATION NUMBER: USC-RFP-2527-CJ

DESCRIPTION: Management Services for the Colonial Center at The University of South Carolina

DATE: February 19, 2014

This Amendment **No.3** modifies the Requests for Proposals only in the manner and to the extent as stated herein.

Attachments

BIDDER SHALL ACKNOWLEDGE RECEIPT OF AMENDMENT **NO. 3** IN THE SPACE PROVIDED BELOW AND RETURN IT WITH THEIR BID RESPONSE. FAILURE TO DO SO MAY SUBJECT BID TO REJECTION.

Authorized Signature

Name of Offeror

Date

8. Termination.

Either party may terminate this Agreement immediately upon notice to the other in the event of a material breach or default by the other party which such other party fails to cure within thirty (30) days after receiving notice thereof from the non-breaching party. Either party may also terminate this Agreement immediately upon notice to the other in the event the other admits in writing its inability to pay its debts as they mature, ceases to function as a going concern, becomes insolvent, makes an assignment for the benefit of creditors, has a receiver appointed for its assets or any substantial part thereof, or files or has filed against it a petition in bankruptcy or for reorganization under the bankruptcy laws; provided that, if such proceedings be involuntary, the other party shall have ninety (90) days to cause such proceedings to be dismissed favorably to it.

9. Miscellaneous.

A. Customer represents and warrants that it has the authority to enter into this Agreement with respect to the Equipment at the Location with full right and ability to fulfill all of its responsibilities and obligations under this Agreement.

B. Any and all late payments shall bear interest at the rate of one and one-half percent (1½ %) per month or the maximum rate permitted by law, whichever is less. In the event any charge and/or any other amount owed by Customer to Sony shall be past due, a material breach of this Agreement shall be deemed to have occurred, which shall excuse Sony from any further obligations under this Agreement.

C. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Oregon. Except as hereinafter provided, all questions or controversies arising out of or in any manner relating to this Agreement shall be submitted to arbitration according to the rules of the American Arbitration Association in Multnomah County, Oregon, and the award or decision made by the arbitrator(s) therein shall be binding upon the parties. A judgment consistent therewith may be entered in any court of competent jurisdiction. Nothing herein contained shall be construed as in any way affecting Sony's right to institute and prosecute a lawsuit in any court of competent jurisdiction to effect the collection of any monies due Sony from Customer. The prevailing party shall be entitled to reasonable attorneys' fees and costs of litigation and/or arbitration.

D. This Agreement shall be binding upon and inure to the benefit of any successors or assigns of the parties.

E. If any performance by Sony under this Agreement is prevented, restricted, or interfered with by reason of any act or condition whatsoever beyond Sony's control, Sony shall be excused from such performance to the extent of such prevention, restriction, or interference; provided that Sony shall take reasonable steps short of litigation to avoid or remove

such cause of nonperformance and to resume such performance as soon as reasonably practicable.

F. All notices which may or are required to be given under this Agreement shall be in writing and shall be personally delivered or sent by a recognized private delivery service or registered or certified mail, return receipt requested, with all postage prepaid, to each party at its address specified on this first page hereof, in the case of Sony to the attention of the JumboTron Division. Either party may change its address for notices by notice given in accordance herewith.

G. This Agreement supersedes any and all other agreements and understandings, whether written or oral, between the parties with respect to the subject matter of this Agreement, including any prior versions. This Agreement represents and incorporates the entire understanding of the parties with respect to its subject matter, and each party acknowledges that there are no warranties, representations, covenants, or understandings of any kind made by either party to the other with respect to such subject matter, except such as are expressly contained in this Agreement. Except as specifically provided in this Agreement, this Agreement shall not be changed or modified except by a writing duly executed by the parties.

H. If any of the terms and provisions of this Agreement shall be determined to be invalid or unenforceable in any respect, all the remaining terms and provisions shall remain in full force and effect.

I. No waiver of any provision of this Agreement shall be effective unless in writing and duly executed by the waiving party. The waiver by either party of any of the provisions of this Agreement or any of its rights thereunder shall not constitute a waiver of any provision or rights other than as specifically waived at that particular time.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

SONY ELECTRONICS, INC.

By: _____

By: _____

Print name

Print name

Print title

Print title

SONY ELECTRONICS, INC.
JUMBOTRON FULL SERVICE MAINTENANCE AGREEMENT

Exhibit A: List of Equipment Comprising the JumboTron Equipment

Sony

Customer

Initial

Initial

SONY ELECTRONICS, INC.
JUMBOTRON FULL SERVICE MAINTENANCE AGREEMENT

Exhibit B: List of Equipment Comprising the Video Production Equipment

Sony

Customer

Initial

Initial

EXHIBIT "F"

OWNER / OPERATOR ADVERTISING POLICIES

To be attached.

Brad

FOOD AND BEVERAGE SERVICES AGREEMENT

This Food and Beverage Services Agreement (the "Agreement") is made as of the 44 day of Aug., 2000 by and between Volume Services, Inc., d/b/a Volume Services America, a Delaware corporation, having its principal place of business at 201 East Broad Street, Spartanburg, SC 29306 ("Volume"), and University of South Carolina, an educational institution and agency of the State of South Carolina, acting by and through its Department of Athletics, having its principal place of business at Rex Enright Athletic Center, Columbia, South Carolina 29208 ("USCAD").

WHEREAS, on April 24, 2000, the State of South Carolina, Materials Management office issued request for proposal documents, specifications and contract conditions for the USCAD to provide concession operations for the Williams-Brice Stadium, Sarge Frye Field, Stone Stadium, Beckham Field, the Track Complex, the Volleyball Competition Facility, the Sam Daniels Tennis Center, and the Maxcy Gregg Tennis Center (all of the foregoing hereinafter collectively referred to as the "Stadium") and for the Carolina Coliseum, the Carolina Arena (under construction) and the Koger Center for the Arts (the three of which are hereinafter collectively referred to as the "Arena"); and

WHEREAS, Volume submitted a proposal in response to the request for proposal which is deemed acceptable by the USCAD for both the Stadium and the Arena (both of which are hereinafter collectively referred to as the "Facilities"); and

WHEREAS, Volume wishes to provide such services, upon the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises and of the promises exchanged by the parties, it is hereby agreed:

**SECTION I
DEFINITIONS**

1.1 Definitions of Terms. The following capitalized terms used in this Agreement shall have the following meanings:

- (a) "Gross Receipts" means all amounts received by Volume on all sales of Food Products and Merchandise from its operations under this Agreement less (i) the amount of any federal, state or local sales or other such tax; (ii) the amount of any gross receipts, rent or similar tax; (iii) gratuities and/or service charges collected; and (iv) any service charges or premiums charged in connection with the use of debit cards or credit cards at the Facility.

- (b) "Contract Year" means the 12-month period commencing April 1, 2002 and ending March 31, 2003 and each successive 12-month period thereafter.
- (c) "Direct Operating Costs" means the actual out-of-pocket costs of the Food Products and Merchandise operations at each of the Arena and Stadium. These costs include, but are not limited to, the Food Products expenses, cost of Merchandise, all direct on-site labor costs (including applicable employment taxes, fringe benefits), payments made to USCAD pursuant to Section 5.1, paper goods, credit card fees, office supplies, utilities, licenses and permits, advertising, equipment repair and maintenance, amortization of the Investment (as set forth in Section 11.1.(b)) smallwares, and reasonable and necessary professional fees. Direct Operating Costs do not include any corporate overhead or corporate administrative expenses.
- (d) "Food Products" means all food and beverages, and shall include without limitation, alcoholic beverages, candy and confections.
- (e) "Food Service Premises" means all areas, improvements, fixtures and trade fixtures upon the Facility's premises which are or may in the future be used in connection with the operation of the Food Services, including adequate storage and office space. The Food Service Premises may not be changed without the prior written approval of Volume. At Williams-Brice Stadium, Food Service Premises shall mean only those areas within the Stadium traditionally used for the sale of Concessions, and shall not include dining, catering or hospitality service areas within the Stadium.
- (f) "Merchandise" means all consigned souvenirs, novelties, clothing, programs and other retail products (other than Food Products) sold by Volume at the Arena. "Merchandise" shall not include the sale of any product officially licensed by Collegiate Licensing Company bearing the trademarks and service marks of the University of South Carolina ("University") and other approved products bearing the traditional colors of the University.
- (g) "Food Services" means all food and beverage services to be provided hereunder, including without limitation, dining, catering, hospitality, vending and concession services, at or through fixed and portable concession stands, roving vendors, snack bars, liquor bars, or any other areas at the Facility where Food Products are sold or served. "Food Services" shall not include (i) the sale of beverages and snack foods through vending machines; (ii) dining, catering or hospitality services at Williams-Brice Stadium or backstage at events at the Carolina arena; or (iii) providing food and beverage services to the locker rooms at Williams-Brice Stadium or the Carolina Arena.
- (h) "Operating Profits" means the difference between Gross Receipts and the sum of all Direct Operating Costs. Operating Profit is the profit realized before payment of the Management Fee, as set forth in Section 5.2.
- (i) "Monthly Accounting Period" means each monthly period (or portion thereof) in accordance with Volume's accounting calendar, which is arranged on a four-week, four-week, five-week basis for each quarter, during the Term of this Agreement.
- (j) "Smallwares" means dishware, glassware, flatware, utensils and similar items.

SECTION II
EXCLUSIVE RIGHTS

2.1 Scope of Rights. Volume shall have the following exclusive rights, except as specifically stated otherwise in this Agreement, at the Facility during the Term of this Agreement:

- (a) to occupy the Food Service Premises; and
- (b) to operate all Food Services and sell all Food Products.
- (c) To sell Merchandise at the Arena (except events such as the circus where the event promoter customarily performs such sales).

2.2 Competing Vendors. In order to (a) control the quality of the products and services sold at the Facility, (b) ensure the safety of the patrons and (c) protect Volume's exercise of its exclusive rights hereunder, USCAD agrees to prohibit other vendors from selling any Food Products anywhere at the Facility, including the parking areas owned or controlled by USCAD, and to use its best efforts to prohibit and prevent patrons from bringing any food, beverages, food containers or beverage containers into the Williams-Brice Stadium and the Arena.

SECTION III
TERM

3.1 Term.

This Agreement shall commence as of April 1, 2002 and shall continue for a period of fifteen (15) years subject to earlier termination as provided in this Agreement (the "Term").

SECTION IV
REPRESENTATIONS AND WARRANTIES

4.1 USCAD's Representations. USCAD represents and warrants to Volume as follows:

(a) that it has been validly formed and duly exists as an educational institution and agency of the State of South Carolina under the laws of the State of South Carolina and that it is duly qualified to do business in the State of South Carolina;

(b) that it has been duly authorized to enter into and perform this Agreement, and that no consent of or notice to any other individual, private entity or governmental authority is required in connection with the execution, delivery and performance of this Agreement;

(c) that execution and performance of this Agreement will not constitute a default in the performance, observance or fulfillment of any material obligations, covenants or conditions contained in any agreement or instrument to which USCAD is a party or by which it or its property is bound; and

(d) that this Agreement, when properly executed by both parties, shall constitute a valid and binding agreement, enforceable against USCAD in accordance with its terms.

4.2 Volume's Representations. Volume represents and warrants to USCAD as follows:

(a) that it has been validly formed and duly exists as a corporation under the laws of the State of Delaware and that it is duly qualified to do business in the State of South Carolina;

(b) that it has been duly authorized to enter into and perform this Agreement, and that no consent of or notice to any other individual, private entity or governmental authority is required in connection with the execution, delivery and performance of this Agreement;

(c) that execution and performance of this Agreement will not constitute a default in the performance, observance or fulfillment of any material obligations, covenants or conditions contained in any agreement or instrument to which Volume is a party or by which it or its property is bound; and

(d) that this Agreement, when properly executed by both parties, shall constitute a valid and binding Agreement, enforceable against Volume in accordance with its terms.

4.3 Survival of Representations and Warranties. The representations and warranties of each party set forth in this Section shall survive the expiration or termination of this Agreement.

SECTION V
OPERATING PROFITS AND MANAGEMENT FEES

5.1 Minimum Operating Profits. With respect to each Contract Year during the Term of this Agreement, Volume guarantees to pay to USCAD Operating Profits in an amount not less than the "Minimum Amounts" set forth below, whether or not Operating Profits for such Contract Year are less than the "Minimum Amount".

Minimum Amount for Stadium Operating Profits per USC home football game

Years 1 - 5	\$75,000.00	525,000
Years 6 - 10 2007 - 2011	\$80,000.00	560K
Years 11 - 15 2012 - 2017	\$85,000.00	595,000

Minimum Amount for Arena Operating Profits per year

Years 1 - 15	\$550,000.00
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In addition to the foregoing Minimum Amounts, Volume and USCAD agree to the following financial considerations as set forth more specifically in the referenced sections below:

Stadium Management Fee (per Section 5.2)

Years 1 - 15	\$100,000.00
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Arena Management Fee (per Section 5.2)

Years 1 - 15	\$325,000.00
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